

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

SPECTRUM LABORATORIES, LLC,
Plaintiff,

v.

URZ TRENDZ, LLC,
Defendant.

Case No. 4:22-CV-03705

Hon. Judge Charles Eskridge

JURY TRIAL DEMANDED

DECLARATION OF LOUIS F. TERAN

I, Louis F. Teran, declare as follows:

1. I submit this declaration in support of Defendant URZ Trendz, LLC.'s ("Defendant") Motion for Reconsideration and Objection Regarding the Court's Order for Forensic Discovery. I am counsel of record for Defendant. I have personal knowledge of the matters set forth below, and if called as a witness, I would and could competently testify thereto.

2. Attached hereto as **Exhibits A** is a true and correct copy of an Affidavit issued by Royal Fragrances, LLC to Plaintiff Spectrum Laboratories, LLC ("Plaintiff").

3. Attached hereto as **Exhibit B** is a true and correct copy of relevant sections of Plaintiff's responses to Defendant Interrogatories.

4. Attached hereto as **Exhibit C** is a true and correct copy of the transcript for the Initial Conference held by this Court on May 3, 2023.

5. Attached hereto as **Exhibit D** is a true and correct copy of the transcript for the Motion Discovery Hearing held by this Court on February 13, 2024.

6. In anticipation of filing this Motion on behalf of Defendant, I held a telephonic conference with Plaintiff's counsel, Mr. David B. Cupar, pursuant local rules on February 27, 2024.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 28th day of February, 2024, at Pasadena, California.

A handwritten signature in black ink, appearing to read 'L. F. Teran', written over a horizontal line.

Louis F. Teran

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Spectrum Laboratories, LLC)	Case No. 4:22-cv-03705
)	
Plaintiff,)	Judge Charles Eskridge
)	
vs.)	
)	
Royal Fragrances LLC, dba City Supply)	
Wholesale et al.,)	
)	
Defendants.)	

Declaration of Saif Ali

I, Saif Ali, declare as follows:

1. I own and operate Royal Fragrances LLC, which does business as "City Supply Wholesale." I will refer to Royal Fragrances as "RF" in this declaration. RF is a named defendant in the above-captioned case (the "Action").
2. I also own and operate the following companies that are named defendants in the Action: SA & AP Investments LLC and Legacy Ecom LLC (collectively, the "Other Ali Businesses"). The Other Ali businesses are both retail jewelry businesses that do not sell *Quick Fix* or any similar products.
3. I understand that Spectrum Laboratories LLC filed a Complaint in the Action in which Spectrum alleges that RF and the other defendants sold counterfeit versions of Spectrum's *Quick Fix* synthetic urine product.
4. Prior to receiving notice of this lawsuit by Spectrum, neither myself nor any of my businesses had any knowledge or reason to believe that the *Quick Fix* products sold

by RF were counterfeits. Both I and RF believed that the *Quick Fix* that RF purchased and sold were genuine *Quick Fix*.

5. None of the Other Ali Businesses sell or market *Quick Fix*, and none of the Other Ali Businesses had any involvement whatsoever with the purchase and sale of *Quick Fix* at issue in this case.

6. The only business that I own or operate that has ever bought or sold *Quick Fix* is RF.

7. As to the other defendants in the case: (a) I do not know the individual Mohd Lodi, I have never heard of him before, and he has no connection to me or my businesses; (b) I do not know the businesses Trek the World LLC, Precision Technology Consulting, or Nagaria Usman Ghani LLC, I have never heard of those businesses before, and they have no connection to me or my businesses; and (c) Afee Parpia is a partner in SA & AP LLC and Legacy Ecom LLC, and he has no connection to RF.

8. Attached as Exhibit A are true and accurate copies of invoices documenting RF's lifetime purchases of *Quick Fix* product. Those invoices account for all of RF's purchases of *Quick Fix*.

9. As the invoices attached as Exhibit A show, the only business from which RF has purchased *Quick Fix* are: Supreme Imports LLC, Elite Wholesale, and MWI Wholesale. There are no other businesses or individuals from whom RF has purchased or received *Quick Fix*.

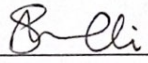
10. Attached as Exhibit B are true and accurate copies of invoices documenting RF's sales and returns of *Quick Fix* products. Those invoices, minus returns shown, account for all of RF's lifetime sales of *Quick Fix*.

11. RF has a current inventory of *Quick Fix* of 112 unit, which RF has quarantined and will provide to Spectrum.

12. The names and contact information for the companies that supplied *Quick Fix* to RF that I provided to Spectrum are complete and accurate.

I declare under penalty of perjury that the foregoing is true and accurate.

Executed on December 16, 2022.



Saif Ali

EXHIBIT B

32800919.2

DATE: November 1, 2023

Respectfully submitted,

By: /s/ David B. Cupar
David B. Cupar (*pro hac vice pending*)
Attorney in Charge
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By: /s/ Courtney Ervin
Courtney Ervin
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**ATTORNEYS FOR PLAINTIFF SPECTRUM
LABORATORIES, LLC**

CERTIFICATE OF SERVICE

Service of this document on all counsel was accomplished via e-mail on November 1, 2023.

/s/ David B. Cupar
David B. Cupar

SPECTRUM'S OBJECTIONS AND RESPONSES TO
URZ'S FIRST SET OF INTERROGATORIES

Objections to "Definitions"

Spectrum objects to URZ's "Definitions" to the extent they attempt to impose obligations that are greater than or different from those imposed by the Federal Rules of Civil Procedure, the Local Rules, and the Court's Orders governing discovery. Spectrum will respond to discovery requests in accordance with applicable and governing laws, rules, and Court orders.

Specific Responses

INTERROGATORY NO. 1: Identify any and all wholesalers to whom YOU have sold any of the PRODUCTS within the last seven (7) years.

Response: Spectrum objects to this interrogatory as neither relevant to any party's claim or defense nor proportional to the needs of the case, considering the importance of the issues at stake in the action, the importance of the discovery in resolving the issues, and the burden or expense of the proposed discovery which outweighs its likely benefit. This action concerns Spectrum's allegation that URZ has infringed and counterfeited its trademarks. The names of Spectrum's wholesalers is not relevant because that information would not tend to make a fact in consequence in determining this action more or less probable than it would be without that information. Spectrum further objects that this interrogatory is intended to harass and needlessly increase the cost of litigation. Accordingly, Spectrum is standing on the foregoing objections.

INTERROGATORY NO. 2: Identify any and all PERSONS that have distributed any of the PRODUCTS within the last seven (7) years.

Response: Spectrum objects to this interrogatory as neither relevant to any party's claim or defense nor proportional to the needs of the case, considering the importance of the issues at stake in the action, the importance of the discovery in resolving the issues, and the burden or expense of the proposed discovery which outweighs its likely benefit. This action concerns Spectrum's allegation that URZ has infringed and counterfeited its trademarks. Spectrum further objects that this interrogatory is intended to harass and needlessly increase the cost of litigation. The names of Spectrum's distributors is not relevant because that information would not tend to make a fact in consequence in determining this action more or less probable than it would be without that information. Accordingly, Spectrum is standing on the foregoing objections.

INTERROGATORY NO. 3: Explain with specificity the intended use of each and every one of the PRODUCTS.

Response: In accordance with FED. CIV. R. 33(d), Spectrum is producing business records from which URZ may obtain the answer to this interrogatory with substantially the same burden as for Spectrum.

INTERROGATORY NO. 4: Explain with specificity the likely use of each and every one of the PRODUCTS by consumers.

Response: In accordance with FED. CIV. R. 33(d), Spectrum is producing business records from which URZ may obtain the answer to this interrogatory with substantially the same burden as for Spectrum.

INTERROGATORY NO. 5: Identify YOUR total sales of each and every one of the PRODUCTS annually for the last seven (7) years.

Response: In accordance with FED. CIV. R. 33(d), Spectrum is producing business records from which URZ may obtain the answer to this interrogatory with substantially the same burden as for Spectrum.

INTERROGATORY NO. 6: Identify YOUR total sales annually for the last seven (7) years.

Response: In accordance with FED. CIV. R. 33(d), Spectrum is producing business records from which URZ may obtain the answer to this interrogatory with substantially the same burden as for Spectrum.

INTERROGATORY NO. 7: Identify YOUR total profits of each and every one of the PRODUCTS annually for the last seven (7) years.

Response: In accordance with FED. CIV. R. 33(d), Spectrum is producing business records from which URZ may obtain Spectrum's company-wide profits with substantially the same burden as for Spectrum. Spectrum does not track profits on a per-product basis.

INTERROGATORY NO. 8: Identify YOUR total profits annually for the last seven (7) years.

Response: In accordance with FED. CIV. R. 33(d), Spectrum is producing business records from which URZ may obtain the answer to this interrogatory with substantially the same burden as for Spectrum.

INTERROGATORY NO. 9: Explain with specificity the manner in which each and every one of the PRODUCTS are displayed for sale.

Response: Spectrum displays its products for sale on its website at <urineluck.com>. Spectrum expects that retailers display the product on store shelves, in display cases, and behind the counter.

INTERROGATORY NO. 10: Identify with specificity each and every one of the PRODUCTS. In YOUR response, include name of each PRODUCT, description of each PRODUCT, and YOUR item number for each PRODUCT.

Response: In accordance with FED. CIV. R. 33(d), Spectrum is producing business records from which URZ may obtain the answer to this interrogatory with substantially the same burden as for Spectrum.

INTERROGATORY NO. 11: State with specificity when and how YOU first started using each of the TRADEMARKS.

Response: Spectrum first started using the marks by placing them on products, product packaging, and on its website. Spectrum began using the QUICK FIX mark by at least Dec. 31, 1999, and it began using the Q-Clock mark by at least April 30, 2017.

INTERROGATORY NO. 12: Identify all channels through which YOU have advertised each and every one of the PRODUCTS (i.e. all accounts with Amazon.com, google.com, ebay.com, or advertising channels).

Response: Spectrum advertises its products on its website, word of mouth, trade shows, and Google Ads.

INTERROGATORY NO. 13: Explain with specificity why YOU decided to use the word “QUICK FIX” as a trademark in connection with the PRODUCTS.

Response: Spectrum does not recall why the phrase “QUICK FIX” was chosen as a trademark for the products.

INTERROGATORY NO. 14: Explain with specificity why YOU decided to use the Q design mark as a trademark in connection with the PRODUCTS.

Response: Spectrum does not recall why the Q design mark was chosen as a trademark for the products.

INTERROGATORY NO. 15: Describe in detail the selection and development of each of the TRADEMARKS, including but not limited to, YOUR reason(s) for selecting each

of the TRADEMARKS and any research or searches YOU performed prior to selecting each of the TRADEMARKS.

Response: Spectrum does not recall how or why the QUICK FIX and Q-Clock marks were selected.

INTERROGATORY NO. 16: List the amount of money YOU spent annually in advertising each of the TRADEMARKS within the last five (5) years.

Response: In accordance with FED. CIV. R. 33(d), Spectrum is producing business records from which URZ may obtain the answer to this interrogatory with substantially the same burden as for Spectrum.

INTERROGATORY NO. 17: Identify all third parties to whom YOU issued or sent a cease and desist letter RELATED TO any of the TRADEMARKS.

Response:

513 Ventures, LLC.

Xhale Distributors

Sahil Chopra, dba Golden Fix Urine

INTERROGATORY NO. 18: Identify all third parties to whom YOU issued or sent a cease and desist letter RELATED TO any of the PRODUCTS.

Response: Spectrum objects to this request as irrelevant and disproportionate to the needs of the case. Spectrum's enforcement of non-trademark rights, such as patent rights, against third-parties is not relevant because that information would not tend to make a fact in consequence in determining this trademark action more or less probable than it would be without that information. Moreover, the request is not limited in time. The request is disproportionate to the needs of the case because Spectrum has enforced its patent rights many times in the past twenty years, and it would take significant time, effort, and resources to look through its and its legal counsel's files to find all cease-and-desist letters "related to any of the products." Accordingly, Spectrum is standing on the foregoing objections.

INTERROGATORY NO. 19: Identify any and all third parties that provided YOU with any information RELATED TO the infringement/counterfeiting or potential infringement/counterfeiting of any of the TRADEMARKS by PROPOUNDING PARTY.

Response: URZ and its attorney. As stated in Spectrum's Complaint, URZ and its attorney's evasive response to Spectrum's Subpoena (including denying sale of *Quick Fix*), and URZ's ongoing refusal to produce complete sales information for *Quick Fix* sales and purchases provides Spectrum with more than enough information to believe that URZ is an active and willful participant in the counterfeiting of *Quick Fix*. Additionally, URZ's

defense in this action that it is legally allowed to counterfeit *Quick Fix* because it is allegedly an “unlawful” product further evidences that URZ is counterfeiting or selling counterfeit *Quick Fix*.

INTERROGATORY NO. 20: For each third party identified in response to Interrogatory No. 19, explain in detail what information was given to YOU.

Response: *See* response to Interrogatory No. 19.

INTERROGATORY NO. 21: Explain in detail what information RELATED TO the claims and defenses asserted in this action was provided to YOU by Royal Fragrances, LLC d/b/a City Supply Wholesale.

Response: Royal Fragrances provided a sworn affidavit, attesting that it had no knowledge of the counterfeiting, and it provided business records documenting its purchase and sale of *Quick Fix*.

INTERROGATORY NO. 22: Explain in detail what investigation of PROPOUNDING PARTY YOU conducted before YOU filed claims in this action against PROPOUNDING PARTY.

Response: Spectrum objects to this interrogatory on work-product and attorney-client privilege insofar as URZ seeks investigative work done by or in conjunction with legal counsel. Spectrum is withholding information on the basis of this objection. Otherwise, investigative work by Spectrum is detailed in its Third Amended Complaint, and Spectrum incorporates that pleading here by reference.

INTERROGATORY NO. 23: Explain in detail, any and all evidence that YOU had as of August 30, 2023, RELATED TO PROPOUNDING PARTY’s infringement/counterfeiting of any of the TRADEMARKS.

Response: Spectrum objects to this interrogatory on work-product and attorney-client privilege insofar as URZ seeks investigative work done by or in conjunction with legal counsel. Spectrum is withholding information on the basis of this objection. Otherwise, *see* response to Interrogatory No. 19 and Spectrum’s Third Amended Complaint.

EXHIBIT C

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE SOUTHERN DISTRICT OF TEXAS

3 HOUSTON DIVISION

4 SPECTRUM LABORATORIES, LLC § CASE NO. 4:22-CV-03705
§ HOUSTON, TEXAS
5 VERSUS § TUESDAY,
§ MAY 3, 2023
6 ROYAL FRAGRANCES, LLC, ET AL § 2:33 P.M. TO 2:42 P.M.

7 **INITIAL CONFERENCE (VIA ZOOM)**

8 BEFORE THE HONORABLE CHARLES ESKRIDGE
9 UNITED STATES DISTRICT JUDGE

10
11 APPEARANCES: SEE NEXT PAGE
12 ELECTRONIC RECORDING OFFICER: MAYRA M. MARQUEZ
13 CASE MANAGER: JENNELLE GONZALEZ
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20 **TRANSCRIPTION SERVICE BY:**

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24 281-277-5325
25 mary@judicialtranscribers.com

Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

APPEARANCES (VIA ZOOM) :

FOR THE PLAINTIFF:

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Courtney E. Ervin, Esq.
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713-547-9100

1 **HOUSTON, TEXAS; TUESDAY, MAY 3, 2023; 2:33 P.M.**

2 THE COURT: All right. Judge Eskridge joining by
3 zoom. Am I visible and audible?

4 MS. CHADWICK: Yes, Your Honor.

5 THE COURT: Okay. All right, I call -- I have an
6 Initial Conference here that I'll do by zoom, and then I'll
7 be into the courtroom for a hearing in person.

8 I first called 22-3705, Spectrum Labs, LLC versus
9 a number of Defendants, but who I think have been replaced
10 at this point as Defendant Does 1 through 10.

11 I'm not sure what counsel we have here. Can I
12 get appearances and for which parties?

13 MR. CUPAR: I represent Plaintiff Spectrum Labs.
14 My co-counsel here are Kasi Chadwick and Courtney Ervin. So
15 all three lawyers here before you are for Plaintiff.

16 THE COURT: Okay, so I have read the joint
17 discovery and case management plan, and I think I understand
18 the background of what's going on. Where are you in the
19 process of trying to identify who your Does are and what do
20 you need from an initial conference right now?

21 MR. CUPAR: Thank you, Your Honor.

22 So we're down to two subpoenas, two non-parties
23 we're seeking information from. We think they've got the
24 information to identify the originator of the counterfeiting
25 good here. That's the key obviously to this case. And

1 converting the Doe into a Defendant, so to speak, a named
2 Defendant.

3 So the two parties that we're seeking information
4 from are called -- I'll use single names Exotic, as well as
5 URZ. URZ, the lawyer there we've been in touch with,
6 initially got no response. We reached out to counsel from a
7 meet-and-confer standpoint. Initially, the counsel
8 completely refused to provide us any information in our
9 meet-and-confer. Counsel agreed that they would provide
10 information, URZ, if there was a protective order in place
11 to protect information with respect to his client, we agreed
12 to that protective order. The Court entered that protective
13 order.

14 That party, URZ, still did not respond to that
15 subpoena with any documents or information.

16 We filed this week, Your Honor, before this
17 Court, a motion to compel discovery on that issue. We've
18 exhausted every avenue. We tried not to get the Court
19 involved with that, but that's where we're at there and
20 their motion will identified that at a high level.

21 So we're expecting now with URZ's counsel to
22 respond to that motion and -- and/or hopefully just provide
23 discovery so we can withdraw that motion and move forward
24 with that. But that's where that one's at.

25 A second subpoena, another party, it's in

1 Arizona.

2 THE COURT: Well, let me let me pause you there
3 for just a second.

4 So I have -- and I guess it was just filed today
5 -- a motion to compel discovery against URZ Trends, so that
6 I just want to make sure what I was understanding, it was
7 freezing up a little bit. Is that motion pending and live
8 before me? Do you need a ruling on it or is it is it off
9 the table now?

10 MR. CUPAR: It's pending and lies before you. We
11 are -- we sent it over or are sending it over to opposing
12 counsel -- obviously they're not on the Court's PACER system
13 -- with the idea there of hopefully that will get that
14 opposing counsel and his client to the finish line in
15 regards to providing us responsive information for the
16 subpoena.

17 MS. ERVIN: I do unfortunately anticipate we're
18 probably going to need a ruling from you on the motion, but
19 I do think that URZ's counsel should get an opportunity to
20 respond, and it's being served on them today, so they
21 definitely haven't had a chance to do that yet.

22 THE COURT: Hum...

23 MS. ERVIN: Well I'll leave that up to you then.

24 THE COURT: Yeah. I mean, they're not a party
25 here. They're not being forthcoming with information to

1 you. So I don't know why I want to get tangled up with
2 that, because they're just going to have to give me the
3 information for me to decide whether they should be party.
4 And that's all you're trying to decide in the first place.

5 Am I misunderstanding something about that?

6 MS. ERVIN: I don't think so, except that we
7 don't believe they're the counterfeiter. We believe they're
8 purchasing from the counterfeiter, and they're trying to
9 protect the counterfeiter. And so once we get the
10 counterfeiter, then we could replace a Doe with the
11 counterfeiter.

12 MR. CUPAR: Well, I'll -- yeah, I'll keep that
13 open. Let's just say we we know they know who it is. We'll
14 leave it at that, Your Honor.

15 THE COURT: Let me say this. I'm going to enter
16 -- I'm granting the motion. I'm going to enter -- my clerks
17 are making a note here. I'm going to enter the order
18 granting a motion to compel that you provided before me.

19 But I'm going to indicate that they can seek to
20 -- seek protection on the discovery that you're seeking.
21 Right? But you're allowed to serve this motion and they're
22 ordered now to do all of this. In responding, they can seek
23 whatever protection they want, but I just don't see why
24 there's a threshold litigation about whether you ask them
25 the questions or not in the first place.

1 I will also say to you that my impression is that
2 if they are not cooperative, if they are hiding things, but
3 if you have reasonable basis to bring them into the action,
4 you can let them know that I'm going to let you plead that
5 on information and belief, and they are going to be a party
6 here.

7 So as long as -- and you know what information,
8 you can't just, you know, ad hoc say you've got information
9 and belief. If you've got reasons why you think they're
10 involved, but it doesn't connect it all the way, I'll let
11 you plead it on information and belief and we'll sort it out
12 at that point.

13 MR. CUPAR: Thank you, Your Honor.

14 THE COURT: Okay. All right. Now, as to the
15 other, so you pleaded for those 1 through 10, but you think
16 there's really only Does 1 and 2 at this point?

17 MR. CUPAR: That's right.

18 THE COURT: Okay. So tell me about the other.

19 MR. CUPAR: Yeah. So a similar situation, a
20 supplier, so through the information we've received through
21 the other subpoenas so far, one of them purchased from this
22 company Exotic in Arizona, the product.

23 So again, we believe that this company in Arizona
24 Exotic either they -- again, same thing. I'll leave it at a
25 high-level general statement. They know who the source is,

1 so to speak.

2 THE COURT: Okay. And where are you in trying to
3 get information or moving to compel information from them?

4 MR. CUPAR: Yeah. So what we tried there is our
5 client actually knows somebody at the company there.
6 They've just been non-responsive, no lawyer. So we've been
7 a little bit careful just from a legal rights standpoint,
8 making sure they're represented or how we approach them,
9 won't be an issue there. So we're trying our best to reach
10 out to them and have them comply to the subpoena, again,
11 without motion practice there in Arizona.

12 THE COURT: All right. And you'll have a -- my
13 practice is to -- you'll have a minute entry from this which
14 will specify the rulings that I'm making here. Between that
15 and the ruling on your other motion to compel, that should
16 probably get their attention and get some cooperation.

17 MR. CUPAR: Thank you, Your Honor.

18 THE COURT: All right. As you're talking with
19 them about things, obviously -- I guess I'll call this now
20 our pre-initial conference. I'll have an initial conference
21 once you've actually got Defendants identified, so that they
22 can also be here and start telling me what they want to say.

23 MR. CUPAR: That makes sense, Your Honor.

24 THE COURT: Okay. All right, so it sounds like
25 there's a little bit of discovery that you all need.

1 Is there anything else that really can be done at
2 this point, since we don't have Defendants present?

3 MR. CUPAR: Nothing further, Your Honor.

4 THE COURT: All right. Well, I will probably see
5 you in 60 or 90 days.

6 MR. CUPAR: Look forward to seeing you in
7 Houston, Your Honor. And it's cold and -- well, yeah. Take
8 care.

9 THE COURT: Thank you very much.

10 MR. CUPAR: Thank you, Your Honor.

11 THE COURT: I'll be in to the court -- I'll be in
12 to the courtroom directly. Thank you.

13 MR. CUPAR: Bye bye.

14 (Proceedings adjourned at 2:42 p.m.)

15 * * * * *

16 *I certify that the foregoing is a correct*
17 *transcript to the best of my ability produced from the*
18 *electronic sound recording of the proceedings in the above-*
19 *entitled matter.*

20 /S/ MARY D. HENRY

21 CERTIFIED BY THE AMERICAN ASSOCIATION OF

22 ELECTRONIC REPORTERS AND TRANSCRIBERS, CET**337

23 JUDICIAL TRANSCRIBERS OF TEXAS, LLC

24 JTT TRANSCRIPT #68240

25 DATE FILED: FEBRUARY 19, 2024

EXHIBIT D

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE SOUTHERN DISTRICT OF TEXAS

3 HOUSTON DIVISION

4 SPECTRUM LABORATORIES, LLC § CASE NO. 4:22-CV-03705
§ HOUSTON, TEXAS
5 VERSUS § TUESDAY,
§ FEBRUARY 13, 2024
6 ROYAL FRAGRANCES, LLC, ET AL § 2:39 P.M. TO 3:43 P.M.

7 **MOTION DISCOVERY HEARING (VIA ZOOM)**

8 BEFORE THE HONORABLE CHARLES ESKRIDGE
9 UNITED STATES DISTRICT JUDGE

10
11
12 APPEARANCES: SEE NEXT PAGE
13 ELECTRONIC RECORDING OFFICER: KIMBERLY PICOTA
14 CASE MANAGER: JENNELLE GONZALEZ
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1 **HOUSTON, TEXAS; TUESDAY, FEBRUARY 13, 2024; 2:39 P.M.**

2 COURT SECURITY OFFICER: All rise. United States
3 District Court for the Southern District of Texas is now in
4 session. The Honorable Charles Eskridge presiding.

5 God save these United States and this Honorable
6 Court.

7 THE COURT: Thank you, everyone. Please be
8 seated.

9 I call for the Discovery in Motion Hearing
10 22-3705, Spectrum Laboratories, LLC versus -- is terminated
11 URZ Trends, LLC. And, okay, then there's counter.

12 Can I get appearance of counsel, please?

13 MR. CUPAR: Your Honor, my name is David Cupar on
14 behalf of Spectrum Labs, my co-counsel is Ryan Cordell.

15 THE COURT: Thank you very much.

16 MR. TERAN: Good afternoon, Your Honor. My name
17 is Louis Teran. I represent the Defendant, URZ Trends LLC.

18 THE COURT: All right. Thank you, sir.

19 And Royal Fragrances, LLC, I just want to make
20 sure I'm showing them as terminated along with -- there were
21 a lot of other Defendants in this action by name that have
22 been terminated. Is that all correct? The only Plaintiff
23 and Defendant is who we have in the room now?

24 MR. CUPAR: Yes, sir.

25 THE COURT: All right. Thank you very much.

1 Okay, so discovery dispute that has risen up to
2 the point of a motion for sanctions. And I also have before
3 me a motion to strike a response that was part of the motion
4 for sanctions. Is that what I have?

5 Anything else on the Agenda that in y'all's mind?

6 MR. TERAN: Yeah. Your Honor, we also have a
7 discovery letter that we --

8 THE COURT: And then your discovery letter.

9 MR. TERAN: Correct.

10 THE COURT: Okay. I also have that, yes, and I
11 read that.

12 Is there any other further update as to the state
13 of discovery or what has been turned over? Have you all
14 discussed further in preparing for this hearing, anything
15 further to advise me on current status of discovery efforts?

16 MR. CUPAR: No, Your Honor.

17 MR. TERAN: No no, no, Your Honor.

18 THE COURT: All right. Let's start with the
19 motion to strike, just to get it set up. And I'm -- I don't
20 need argument on this one. I'm going to deny the motion.
21 From the Plaintiff's perspective, if you're asking for
22 sanctions, it's better for me to have heard whatever the
23 Defendant wants to respond makes the Record cleaner.

24 I will say -- sorry, I should get my docket sheet
25 here.

1 Mr. Teran, I'm not getting exercised about it,
2 but I did not appreciate the ellipses that you used as to my
3 prior order to elide the fact that really, the ten-day
4 requirement was as to the motion that was being brought.

5 I note that in the practice that followed, the
6 ten days fell within the Christmas Holiday. Like I think
7 your date was December 26th. And if you'd asked for an
8 extension on that basis, I would have given it.

9 But you did not do yourself much service by
10 chopping up my Order to try to convey that it said something
11 that it didn't. Okay?

12 Do you want to respond in any way to that?

13 MR. TERAN: Yes.

14 THE COURT: That's my impression of what you did.

15 MR. TERAN: Yeah. Yes, Your Honor. I truly
16 understood your Order to indicate that there was an OSC,
17 with regards to the -- which is why I submitted.

18 THE COURT: And I -- I got that, and I did not --
19 I talked with my -- I noted that that was there, and so what
20 I hear and what I understand is that you may have been
21 confused about that, I agree. But you still ellipsed my
22 Order and took out a very critical paragraph in trying to
23 explain what was going on.

24 MR. TERAN: Well, I apologize for that, Your
25 Honor. I, I truly and I truly, and I read the order again

1 last night --

2 THE COURT: Okay.

3 MR. TERAN: -- in preparation for this. And as I
4 read it and I, you know, no disrespect to the Court.

5 THE COURT: Yep.

6 MR. TERAN: As I read it, it seems like an OSC
7 Order with an expectation that a motion may be coming in the
8 future. I truly believe that those deadlines were related
9 to the OSC.

10 THE COURT: Okay. And in any event, based on
11 what you're saying, your understanding was, I see that you
12 complied with your understanding of that deadline, which was
13 within 21 days, ten days fell on -- so I'm not -- just on
14 briefing in the future, I read and look at those types of
15 things, just so you know. Okay?

16 All right. Let me make sure there was nothing
17 else on this that I wanted to raise.

18 All right, so I do have that paper before me and
19 it has been read and considered.

20 Let me take up next Defendant's discovery letter
21 that is pending. I have read Spectrum's response letter of
22 December 14th, which attached an email from December 1st
23 saying basically, hey, here's what we're producing and
24 responding right now and closing with. I'm happy to discuss
25 further by phone.

1 And that there was no attempt to really vet this
2 as a dispute or bring it to a head before firing off a
3 discovery letter. My rules do require a full conference and
4 try to get on the same page, too, as if there are specific
5 -- there may well be specific things that you're saying in
6 your letter that you are entitled to. But there needs to be
7 cooperation and conversation between counsel before it's
8 appropriate to bring it to my attention.

9 So the relief on the discovery -- the relief
10 requested in the discovery letter of December 11th is denied
11 without prejudice to conversation, further conversation
12 between counsel, and if it can't be worked out, then you can
13 submit another letter. Okay?

14 MR. TERAN: Fair enough, Your Honor. Thank you.

15 THE COURT: All right. I will also say for the
16 Record on that from the response that Spectrum's counsel
17 gave, that the quickness with which you chose to bring a
18 discovery dispute, does have the appearance of trying to
19 manufacture a discovery dispute. You may disagree with
20 that. That's fine.

21 But I'll tell you when I'm looking at a next
22 discovery letter from you, I'm going to have in mind whether
23 I think cooperation is being attempted by counsel. Okay?

24 And anything further you'd like to say on that,
25 Mr. Teran?

1 MR. TERAN: Yes. Your Honor. I -- when I read
2 the letter, the response letter, there were certain issues
3 that I thought were not going to be resolved, but there were
4 certain issues that I thought would be resolved. And so in
5 my dispute letter to the Court, I only raised the issues
6 that I thought would not be resolved. And I did it
7 expeditiously, only because we have a short period of time
8 for discovery.

9 THE COURT: Yeah.

10 MR. TERAN: And and we do want to take
11 depositions.

12 THE COURT: Okay. All right. So the letter is
13 denied without prejudice. Counsel to confer. And then I'll
14 take up anything further on that, if needed.

15 All right, so then that leaves the motion for
16 sanctions that's pending at Docket 83.

17 Mr. Cupar, are you taking the lead on argument
18 here?

19 MR. CUPAR: Yes, sir.

20 THE COURT: So you've received 63 pages total?

21 MR. CUPAR: 46 plus 6, makes it less than that,
22 52.

23 THE COURT: 52 pages total. All right.

24 Mr. -- is it Tehran?

25 MR. TERAN: It's Teran.

1 THE COURT: Teran. Did you simply ask your
2 client to do a search, or did you conduct the search
3 yourself, or have people from your office conduct the
4 search?

5 MR. TERAN: Your Honor, I asked my client to
6 conduct a search.

7 THE COURT: Okay.

8 MR. TERAN: And I was -- I was assured that this
9 is all the documents that are -- that are there. And I
10 should point out, this is a -- a small business that sells a
11 wide variety of products. And this apparently is one
12 product that they sold as an offshoot -- very, very small
13 amounts of it.

14 And we have reason to believe that our supplier
15 is an authorized distributor of these products. So we don't
16 we don't believe that any of these products that we sold are
17 actually --

18 THE COURT: So you have a supplier of these
19 products? Has that been turned over, Mr. Cupar, all
20 documents as to who the supplier might be?

21 MR. CUPAR: No.

22 THE COURT: Okay, so that's one problem.

23 MR. TERAN: Well, no, we turned over the invoices
24 that we received from our supplier.

25 THE COURT: Okay.

1 MR. TERAN: That is -- that is incorrect.

2 THE COURT: But there's no other communications?

3 MR. TERAN: No.

4 THE COURT: There's no -- there's invoices, but
5 there's no communications with the supplier?

6 MR. TERAN: Correct.

7 THE COURT: Okay.

8 MR. TERAN: So we have -- we turned over invoices
9 and then through the letter they requested actual proof that
10 we paid. So we turned over our checks indicating that we
11 paid to that source. But beyond that, no, there's been no
12 communication.

13 THE COURT: And that's just -- say so of your
14 client to you, correct?

15 MR. TERAN: That -- that is correct.

16 THE COURT: Okay. I will say, Mr. Taren, that
17 there is going to be further discovery that's ordered here.
18 As I said in my prior order, that the motion could request
19 intrusive electronic discovery. And so some real Court
20 Ordered discovery is going to go on. And so I want --
21 what's already been represented to me is what the Record is.
22 I want you to know quite clearly that I take discovery very
23 seriously and representations as to discovery very
24 seriously.

25 So I'm simply saying be careful on what you are

1 absolutely representing to me, because if -- when the
2 discovery happens, it's contrary to assertions that have
3 been made -- I either, if that's what -- either you or your
4 client will be held to account for that, okay?

5 So I'm giving you a chance just to know I'm going
6 to be looking at this.

7 MR. TERAN: Yeah, understood, Your Honor.

8 THE COURT: Okay.

9 MR. TERAN: Crystal clear.

10 THE COURT: If your client is misleading you,
11 that's fine. That happens to lawyers. I'm just letting you
12 know, let's be careful, okay?

13 MR. TERAN: Yes, Your Honor.

14 THE COURT: Okay.

15 MR. TERAN: Can I add one more thing?

16 THE COURT: Yes.

17 MR. TERAN: I know for a fact that we turned over
18 invoices from our suppliers.

19 THE COURT: Okay, and I think some of those have
20 been -- and I don't know that there's a disagreement about
21 that.

22 MR. TERAN: Oh, I thought you just indicated that
23 we didn't.

24 THE COURT: The invoice -- Mr. Cupar, on the
25 invoices that were turned over, what were those?

1

2

MR. CUPAR: I don't know what the invoices are.

3

There's an in here -- I have it here.

4

Thank you. No, that's a -- that's a purchase, I think.

5

6

May I proceed just up to the ELMO?

7

THE COURT: Sure.

8

MR. CUPAR: Just for a moment, Your Honor.

9

THE COURT: Do you have something that you wanted to present to me?

10

11

MR. CUPAR: Oh, I can put it on the ELMO, Your Honor, if that's okay?

12

13

THE COURT: No, no, no. The screen's down and ready, did you have a PowerPoint presentation that you wanted to go through?

14

15

16

MR. CUPAR: Not a PowerPoint.

17

THE COURT: Or just in case you wanted to show me stuff?

18

19

MR. CUPAR: I was just going to show you the invoice, if I --

20

21

THE COURT: Okay. Go ahead. All right.

22

MR. CUPAR: -- understand Mr. Teran here.

23

I'm not sure, so I received -- here we go so the Court can see that -- I received, for example, this is one of the first six pages back in early September after after

24

25

1 the Court's initial Order. I don't know what it is. I
2 could tell it's some sort of document that shows some sort
3 of SMK creation, it looks like at the top.

4 I'm sorry, just so you can hear me.

5 And then the name to URZ Trends. I'm assuming
6 this might be the supplier document. I just don't know.

7 THE COURT: Okay.

8 MR. CUPAR: What catches my eye, Your Honor --
9 again, connecting some dots here for a moment -- and I
10 apologize. I don't want to get ahead of --

11 THE COURT: No, that's all right.

12 MR. CUPAR: -- where your questioning is, but
13 this is what kind of catches my eye. We had a private
14 investigator in March when we initially provided the
15 subpoena under President Reagan's Trust But Verify theory,
16 and I followed that as a lawyer.

17 THE COURT: Right I've -- yeah.

18 MR. CUPAR: Yeah. And so I just wanted to raise
19 this for a second, for a moment, just kind of giving some
20 context here, kind of what we're expecting versus what we
21 received, Your Honor, just for a moment.

22 And you can see, Your Honor, this receipt again,
23 it's not just the receipt. There's some specifics on this
24 receipt that should catch the Court's eye.

25 So, for example, URZ Trends, the specific

1 address, there's a real specific receipt number on the top
2 right, Your Honor. For example, date -- not just date, but
3 time of this transaction, obviously the name of the product,
4 it looks like the SKU is below that. Taxes, customer
5 payment was by cash.

6 But even things like employee name of a gentleman
7 or a lady here, the bluesman US man (phonetic), there's a
8 lot of specifics, right? So when we are looking at --

9 THE COURT: But that's not part of the production
10 that was made to you?

11 MR. CUPAR: You got it. You know where I'm
12 going.

13 THE COURT: Okay.

14 MR. CUPAR: That's right, Your Honor.

15 THE COURT: Okay.

16 MR. CUPAR: We still haven't seen it. And
17 initially the representation, if you recall, there's no
18 responsive documents. We don't sell the product. That was
19 the initial representation.

20 THE COURT: I remember.

21 MR. CUPAR: Yeah. So to your point about
22 representation, in my view on this, just again in my
23 practice too, and I think all of us as lawyers and as the
24 Court is what we want, is a "show don't tell" mentality
25 about discovery, not not just a representation, I did this

1 and what we haven't seen, and this is why we ended up filing
2 the motion for sanctions. We don't take it lightly to seek
3 that relief -- is what we haven't seen here is the show part
4 of it. You know, what steps have been taken, what
5 custodians, what keyword searches -- give you another one,
6 actually, about invoices, going back to Mr. Teran's point,
7 just the little thing -- again, just this just got produced
8 back in December of this type of -- it's mostly black for a
9 reason.

10 So this is another example of an invoice. I
11 don't know if this is a supplier or customer. Situation and
12 it's going to be Defendant No. 41, this document and you'll
13 see -- yeah, I'm sorry, Your Honor.

14 Thank you. And this URZ Trends here, one is that
15 there's a whole redaction here. So that's an issue in and
16 of itself that why produce something redacted if --

17 THE COURT: But then line 15 is a Quick Fix
18 product.

19 MR. CUPAR: You got it. So I'm assuming this
20 must be a sale. But take a look here. For example, there's
21 a URZ Trends at gmail.com. And what I didn't see in any of
22 the briefing from counsel here is for example, we looked at
23 that URZ Trends at gmail.com record and did a -- you know,
24 there's no specific. Let me show you from the briefing.
25 This is what caught my eye.

1 So that's what I would expect. Again,
2 expectation versus reality, I would have expected to have
3 seen these are the custodians, these are the email accounts.
4 We went in. We did keyword searches. This is what we found
5 or didn't find based on that.

6 And the Court and we at Spectrum found nothing
7 like that here.

8 I wanted to show this out of -- and this is out
9 of Document 84 on the Docket. This is their opposition on
10 our motion for sanctions. It's just a one paragraph
11 internal and external communication. And all it is, is just
12 a representation that the Court ordered us to provide all
13 internal and external communications -- not us, but URZ and
14 that none of them exist. But without an explanation, again,
15 the show parts, the part that's missing here and that's why
16 we sought the motion to begin with. This only bolsters our
17 position as far as we're concerned.

18 THE COURT: Yeah. Anything else you want to show
19 me?

20 MR. CUPAR: When we're ready, if it's
21 appropriate, I'll discuss the proposed order for the
22 sanctions that we presented.

23 THE COURT: Right. I'll get --

24 MR. CUPAR: I'll hold off on that.

25

1 THE COURT: -- yeah, I'll get around to that.

2 MR. CUPAR: Yeah. The redactions caught my eye
3 again. Just it's -- I don't -- it doesn't matter what Court
4 we are in America -- State, Federal -- we -- parties can't
5 redact on the sole basis of relevance. That's the old fox
6 guarding the chicken house problem. So, again, that was
7 improper in and of itself.

8 So those are the key things. I just wanted to
9 show everything else we identify in the briefing.
10 Obviously, if you have any questions, Your Honor, from what
11 we identified in our briefing, I'm happy to answer them, but
12 I'll otherwise sit back down.

13 THE COURT: Okay. All right. Thank you.

14 MR. TERAN: I would like to respond, Your Honor.

15 THE COURT: Oh, yeah. I guess go ahead first and
16 then I'll have questions for you.

17 MR. TERAN: I want to correct one thing very
18 clear for the Record.

19 THE COURT: Sure.

20 MR. TERAN: We did produce the documents related
21 to the receipt that was that was shown to Your Honor. I
22 would point counsel, the first thing that we produced was in
23 Bates Stamp Defendant 0005, is a spreadsheet that identifies
24 that transaction. And then they came to us with a dispute
25 letter indicating we would like to see the invoices for all

1 of these transactions. And we did produce that invoice. It
2 is -- let me pull up the Bates Stamp here. It is Bates
3 Stamp Defendant 0036. It is the actual invoice for that
4 specific transaction. It matches the date, the quantity,
5 the price, everything.

6 THE COURT: Okay. Mr. Cupar, do you have that?
7 Can you do --

8 MR. CUPAR: I do and if I may again?

9 THE COURT: Yeah. Let's put that up.

10 MR. CUPAR: Yeah, sure. I'm just going to show
11 -- I'll show it first.

12 I don't agree with Mr. Teran's view. So you said
13 five, right, sir?

14 MR. TERAN: Yes, correct.

15 MR. CUPAR: That's what I have on this, Doc Five.
16 So before I show this, I want to just show the receipt one
17 more time. Your Honor -- sorry to do this to you, but
18 just --

19 THE COURT: No, I've got it in mind. You don't
20 have to --

21 MR. CUPAR: Yeah, yeah. Okay. So you saw the
22 details in the receipt.

23 THE COURT: Yeah.

24 MR. CUPAR: So the one question that pops up in
25 my head is, is what we're looking at here, this Document

1 Five from Defendant show any of that information that's
2 shown in that receipt and the answer is no.

3 So a good one here is just like any good summary
4 of purchases or sales. What's one thing you'd expect that
5 any such document? Dates, right?

6 THE COURT: Right.

7 MR. CUPAR: No dates here. I we have Uzman
8 (phonetic), the owner. Nothing like that here. We don't
9 have the receipt number here correlating back to it, so.

10 THE COURT: Well, let me just say, so I'm
11 looking. So the receipt has \$560. And the third column,
12 which I don't even know what it corresponds to, the third
13 column, what it's supposed to be. But for a Momentum Vape
14 Novelty, there's an entry of 560.

15 MR. CUPAR: There could be that. It could be
16 that.

17 THE COURT: So is that it?

18 MR. TERAN: That is, Your Honor.

19 THE COURT: Okay.

20 MR. TERAN: That is.

21 THE COURT: So go ahead.

22 MR. CUPAR: Yeah. So that could be it. But what
23 we don't have here is the details on this or any other
24 transactions. And what we don't have is clarity on is this
25 the only Quick Fix sales, for example. Are there other

1 ones, things like that? So again we're we have to trust the
2 people who provided this to us to say this is it, nothing
3 else.

4 THE COURT: Yeah.

5 MR. CUPAR: And we have no other basis, again,
6 under that "show and don't tell" theory of confirming that.
7 That's my concern.

8 THE COURT: Okay. All right.

9 MR. TERAN: So, Your Honor, so the initial
10 production --

11 THE COURT: Oh, and then --

12 MR. TERAN: Yeah.

13 THE COURT: -- but then you said it was invoice
14 No. 32, page 32.

15 MR. TERAN: Right. Correct.

16 THE COURT: Page 32, was it? Do you have that?
17 Mr. Cupar?

18 MR. TERAN: Yes.

19 MR. CUPAR: I do.

20 MR. TERAN: It's 36.

21 THE COURT: 36?

22 MR. TERAN: Correct.

23 THE COURT: Let me see what that looks like, just
24 to see.

25 (Pause in the proceedings.)

1 MR. TERAN: And by the way, Your Honor, I should
2 point out that when we produced the spreadsheet, we did not
3 know about the -- I don't believe we knew about the receipt,
4 but it was included.

5 THE COURT: Okay.

6 MR. TERAN: So we're not hiding anything.

7 THE COURT: Got it.

8 MR. TERAN: All right?

9 THE COURT: Okay, okay.

10 MR. CUPAR: So this looks like the March for --
11 yeah, so even the receipt number, if you look at -- I'm
12 sorry to do this, I apologize for it.

13 THE COURT: No, I'm looking at what you -- it
14 said before was receipt number --

15 MR. CUPAR: It ended with, like an 864.

16 THE COURT: 68-something something 64.

17 MR. CUPAR: 64, yeah, the last two digits.

18 THE COURT: And this is showing 1923.

19 MR. CUPAR: Bingo. That's my concern, things
20 like that. There's just an inconsistency there that --
21 again, maybe it is, maybe it isn't.

22 THE COURT: Which in discovery it might be
23 explained that electronically. There's some reason, but I
24 get what you're saying.

25 MR. CUPAR: Yeah. So --

1 THE COURT: At least it --

2 MR. CUPAR: Yeah.

3 THE COURT: -- it begs the question.

4 MR. CUPAR: We did a better job, I feel like with
5 URZ's info in terms of understanding what they're doing than
6 what Mr. Teran has provided to us here and what URZ has
7 provided to us through Mr. Teran. So --

8 THE COURT: Okay.

9 MR. CUPAR: -- that's my concern here.

10 THE COURT: Do you have -- Mr. Cupar, do you have
11 any sense or knowledge at this point on volume of product
12 that you think Defendant is moving?

13 MR. CUPAR: We don't know that.

14 THE COURT: So you don't know because --

15 MR. CUPAR: We don't know.

16 THE COURT: -- Mr. Teran is representing it's a
17 small amount. Whatever ultimately we get to the bottom of,
18 it's a small amount. And you don't know one way or the
19 other at this point?

20 MR. CUPAR: Exactly.

21 THE COURT: Okay. All right.

22 MR. CUPAR: Yeah. The other thing, too, just at
23 a high level with this client in the past, when it's dealt
24 with counterfeiting, it happens every three or four years.
25 What'll happen too is that when a sales made, what happens

1 is counterfeit product will get embedded in with the actual
2 product, too. So that that's a very common counterfeiting
3 move, not just in this industry, but just really almost
4 every counterfeiting industry, especially when you're
5 selling multiple products at one time.

6 So there's just things like that in play here.
7 I'm not saying that did happen here. I'm just saying that's
8 just something I'm on the lookout for.

9 THE COURT: This product is a synthetic urine?

10 MR. CUPAR: That's right.

11 THE COURT: All right. That was different I had
12 one that was a -- there's a product called "Ooze" and -- or
13 not a product, but it was a line called "Ooze," and it had
14 to do with batteries for vape pens. And there were a lot of
15 these similar types of issues and difficulties in discovery.

16 MR. CUPAR: Yeah. And one thing, too, here is
17 again, there are -- as Your Honor pointed out, there are
18 times when it's a client issue. You know, you ask a client
19 -- we've all been there. We ask a client and you have to
20 ask a few more times and again, get more.

21 One other thing that just here that I'm concerned
22 about is the tough questions aren't being asked and the
23 tough answers aren't coming out, hence why we have the
24 proposed order that we do. Again, I don't necessarily think
25 -- maybe I'm jumping ahead just for a moment, but I'll just

1 raise one more thing. I found my co-counsel now, I found
2 earlier today even like there's a counterclaim, an
3 illegality counterclaim, which we think of back, you know, a
4 famous case was --

5 THE COURT: I remember.

6 MR. CUPAR: The Washington, yeah.

7 THE COURT: Yeah, that teed up earlier.

8 MR. CUPAR: Yeah. One thing I just wanted to
9 point out, too, this is kind of what kind of a counsel issue
10 today I get worried about presenting here. I'm happy to
11 make this an exhibit for this hearing. This is a trademark
12 application, Your Honor, for a product named "Magnum Detox."
13 Mr. Teran filed. He filed it on behalf of his client on
14 September 3rd, 2023.

15 And what it is, is it's for chemical compositions
16 and agents, namely synthetic urine. It's actually a known
17 product out there. If you actually go online, you'll see
18 it's a synthetic urine product.

19 Mr. Teran filed that for his client ten days.

20 THE COURT: Actually he's arguing illegality
21 here.

22 MR. CUPAR: Ten days before.

23 THE COURT: He'll have an explanation for that --
24 which he's on his feet. And I'm going to --

25 MR. CUPAR: Yeah.

1 THE COURT: -- let him give me that explanation
2 momentarily.

3 MR. CUPAR: And you can see where I'm going with
4 this. It's just things like that that the "say and do"
5 issue, I'm starting to see just that again and again back in
6 March again, no documents we had we you know, again, this
7 isn't our first rodeo.

8 THE COURT: Magnum Detox has like nothing to do
9 with this case though, right?

10 MR. CUPAR: That's right.

11 THE COURT: There's that point that you want to
12 make about it, but it's not related to the products or the
13 parties that we're talking about right now, right?

14 MR. CUPAR: Yeah.

15 THE COURT: Okay. Got it.

16 MR. CUPAR: Discovery takes a village and, you
17 know, and sometimes it is a client issue solely. Other
18 times it's client plus lawyer. I'm just raising it here. I
19 see both potentially. And I think everyone needs to tighten
20 up on the URZ side based on what I'm seeing here. And I
21 don't take stating that lightly. That's all.

22 THE COURT: All right, Mr. Teran, I believe that
23 you'll agree that Mr. Cupar deftly dropped something on me
24 to make you explain it, although it has nothing to do with
25 what's going on here at the hearing. But as to the defense

1 that you've been wanting to raise, what do you want to say
2 about that document?

3 MR. TERAN: Okay. That is an entirely different
4 client.

5 THE COURT: Oh, I get that, I understand that.

6 MR. TERAN: Okay. So they're doing research on
7 me.

8 THE COURT: That's why I was asking. It has
9 nothing to do with.

10 MR. TERAN: So they're obviously doing research
11 on me. That is an entirely different client.

12 THE COURT: It's a credit to you.

13 MR. TERAN: And they use --

14 THE COURT: That's a compliment to you.

15 MR. TERAN: Well no, Your Honor, Your Honor, hold
16 on. The use of that product for which my client sells the
17 Magnum Detox is completely different.

18 THE COURT: Okay.

19 MR. TERAN: It is not --

20 THE COURT: That's fine.

21 MR. TERAN: -- as I understand it, it is not the
22 same thing.

23 Now, Your Honor, I want to point one thing out.

24 THE COURT: It's like -- and I'll say, it's like
25 literally not an issue before me right now.

1 MR. TERAN: It's not an issue.

2 THE COURT: If that legality issue comes up,
3 that's going to be in evidence, then I'm going to understand
4 what the difference is, if any, between these products are.

5 MR. TERAN: Right.

6 THE COURT: Totally fine. All right. Go ahead.

7 MR. TERAN: Another thing, Ooze -- Your Honor
8 brought up Ooze.

9 THE COURT: Yes.

10 MR. TERAN: I handled that case for another
11 client.

12 THE COURT: Oh, that's right.

13 MR. TERAN: It wasn't for this client.

14 THE COURT: And you never had to appear.

15 MR. TERAN: We never had --

16 THE COURT: That was during COVID. And so we
17 never had any in-person hearings. Right?

18 MR. TERAN: Well, we never had any discovery
19 issues.

20 THE COURT: Yeah.

21 MR. TERAN: You can look at the Record. There is
22 zero discovery issues on that.

23 THE COURT: Okay. All right. All right.

24 MR. TERAN: And then I had another case.

25 THE COURT: Is there a seizure in that case like

1 the Marshals went and like, went and seized product. My
2 case manager is nodding her head yes.

3 MR. TERAN: I think, I think, I think that's
4 right. I think that's right.

5 THE COURT: And that's nothing on you. That was
6 like at the outset of the case.

7 MR. TERAN: Correct, correct.

8 THE COURT: They just want to make sure that
9 nothing was spoliated and they went and seized.

10 MR. TERAN: Correct. But there were no discovery
11 issues. I want to point that out.

12 THE COURT: Okay. All right. All right. I take
13 that and I didn't recall that you were on that case. So I
14 wasn't like saying that directed to you.

15 Go ahead.

16 MR. TERAN: Okay. And then I had another case
17 with Ooze again -- well with this client, URZ, it was
18 handled by another judge.

19 THE COURT: It was handled by another judge?

20 MR. TERAN: Yes.

21 THE COURT: Okay.

22 MR. TERAN: And there wasn't a single discovery
23 dispute in that case either. And you can look at that.

24 THE COURT: Who was that before, if you recall?

25 MR. TERAN: I'm sorry?

1 THE COURT: Who was that before -- here in
2 Houston?

3 MR. TERAN: Yes, here in Houston, in this
4 courthouse. I can't remember the name, Your Honor, I
5 apologize.

6 THE COURT: All right. That's okay.

7 MR. TERAN: There was no single discovery dispute
8 in that.

9 THE COURT: Okay, all right.

10 MR. TERAN: And, you know.

11 THE COURT: All right. So that was just the one
12 little evidentiary point about what had been produced. And
13 you'd point me to a couple of things.

14 What else did you want to argue about? What
15 you've done? I guess one question I've got is what
16 electronic search of electronic databases has been done, to
17 your knowledge, if any?

18 MR. TERAN: Right. So we have produced, as I
19 understand it, my client has like a spreadsheet generating
20 system that creates a spreadsheet of their sales. We have
21 produced those spreadsheets. The comment that came back to
22 us through the dispute letter was, well, we don't have dates
23 to these transactions and we would like to see the actual
24 invoices. So we did. And that, you know, that Your Honor
25 was not, as I understand it, pulling out these invoices was

1 not as easy as pulling out the spreadsheet because these are
2 invoices. I guess they had to look or something like that.

3 And then also the invoices from the supplier. I
4 think two of the three invoices from suppliers were
5 handwritten. So, so, you know, those were not
6 electronically. And so we had to search for those, which we
7 did. We had originally produced a spreadsheet from our
8 system indicating how many we had purchased and from whom,
9 but they wanted to see the actual invoices pursuant to the
10 discovery dispute letter that they submitted to Your Honor.
11 So we went and we looked. We looked through, as I
12 understand it, they looked through stacks of documents
13 looking for those invoices which are handwritten.

14 And we did. We found them. We produced them.

15 As I understand it, Your Honor, we have produced
16 all the invoices, all the receipts for our purchases, for
17 our sales. There were no communications. If you look at
18 the spreadsheet that we produced, the number of units that
19 were sold of these products is rather minimal.

20 As I indicated in my brief, my client sells a
21 wide variety of products. I want to say hundreds, maybe
22 thousands. I'm not sure, of different types of products.
23 and this is, you know, it's a small unsophisticated business
24 where sometimes they'll just -- they'll sell whatever comes
25 their way. And this happens to be one of those which came

1 their way. And they sold a very small amount. But from our
2 indication these are not counterfeits. The sources for
3 which we produced the receipts and invoices, we believe are
4 authorized resellers of these products. And their private
5 investigator took 112 units of our products before this case
6 started without us knowing. And I haven't seen not even an
7 allegation that any one of those 112 units that we sold to
8 their private investigator were counterfeits.

9 THE COURT: Got it. So were counterfeits, so
10 you're saying legitimate source of supply or grey market or
11 what?

12 MR. TERAN: No. A legitimate source of supply,
13 we believe there were authentic. They came, they derived
14 from the Plaintiff.

15 THE COURT: As in your theory is that Spectrum
16 sold legitimately to someone who sold legitimately to your
17 client?

18 MR. TERAN: Correct.

19 THE COURT: Okay. And so our invoices identifies
20 the source. We believe those are authorized resellers from
21 Defendant.

22 THE COURT: Okay.

23 MR. TERAN: And one of the issues in our
24 discovery dispute is we would like to have a list of their
25 authorized resellers so we can confirm that. But we haven't

1 gotten that.

2 THE COURT: Okay.

3 MR. TERAN: That is -- and like I said, Your
4 Honor, that is my understanding.

5 THE COURT: I would -- there's my prior orders
6 here indicate that there have been -- I had prior hearings
7 on discovery in this matter. They indicate that I've had
8 concerns about the fullness and completeness of compliance.
9 And that's still not allayed here.

10 And what I'm hearing is that there is an
11 unsophisticated client here in Houston who has been left to
12 its own devices to do a record search for production that
13 complies with Federal discovery rules.

14 And I think that Plaintiff shows reasons why
15 there's at least some doubt as to whether that has been
16 fully stated. I have it pending in front of me as a motion
17 for sanctions. I am thinking what I'm going to do here is a
18 further order that is not an order of sanctions, but that is
19 in line with some of the requests that Spectrum Laboratories
20 is asking for, specifically, how discovery will proceed now
21 in the future, which I would enter not as a sanction, but as
22 an order to comply with discovery obligations.

23 And I would reserve further consideration of
24 whether sanctions are in order, depending on the level of
25 cooperation and turnover of things that go according to the

1 way that Spectrum has asked for it. Put to one side any
2 question about attorney's fees to this point or striking of
3 defenses, et cetera. I'm simply talking about the request
4 as to what the discovery would be. That's what I'm thinking
5 about doing.

6 I'm going to take up those categories one by one.
7 But Mr. Teran, to the extent that you recall the list of
8 what they've asked for, do you have general concerns or
9 opposition to what I've stated? I want to have further
10 conversation about as to whether that's proper or not,
11 because I'm trying not to have to get all the way to the
12 point of finalizing a decision as to sanctions, but I would
13 like discovery to actually happen in this case.

14 So what is your thoughts?

15 MR. TERAN: Yes, Your Honor, we have no objection
16 to discovery. We are more than willing to comply with any
17 discovery order. I would like to discuss, Your Honor, your
18 comment about the previous hearings.

19 THE COURT: Okay.

20 MR. TERAN: The issue, if you're -- if I may,
21 Your Honor?

22 THE COURT: Yeah, please.

23 MR. TERAN: The issue in those -- in the -- in
24 that previous hearing, our concern was that, one, we were
25 not a party to this suit, and we received a subpoena

1 demanding we disclose our confidential information. We were
2 not even a party to this suit. We were not even accused of
3 doing anything wrong.

4 And when I responded, I said, what is this Quick
5 Fix, Quick Fix product? It wasn't properly defined in the
6 subpoena, and I believe it wasn't properly defined because
7 they were trying to dance around the synthetic urine. But
8 nevertheless --

9 THE COURT: But as I recall it, in the context of
10 what was happening before me, I didn't get an appearance
11 from you objecting and that --

12 MR. TERAN: Oh, no, I did.

13 THE COURT: I mean, eventually, yes. But first
14 it was stonewalling and just not responding. If I'm
15 remembering it right.

16 MR. TERAN: Yeah, we were not -- we were not a
17 party to the case.

18 THE COURT: Got it.

19 MR. TERAN: I wasn't even brought in to the case.

20 THE COURT: But there can still be third-party
21 discovery.

22 MR. TERAN: Well, not related to our private
23 sales. I mean, third-party discovery would have to be
24 related to the case that is at issue, which was against
25 Royal Fragrances. So the proper discovery would have been

1 communications or sales with or to Royal Fragrances. That
2 was not what was requested. They requested our sales
3 information of this product as if they were accusing us of
4 counterfeiting already, when a case hadn't been filed
5 against us.

6 And then when I got involved, my first response
7 was, what is this? It wasn't properly defined. And if you
8 recall, Your Honor, I did appear at a first hearing, and
9 that was my first objection to Your Honor. This is not
10 properly defined. I'm not really understanding what this
11 product is.

12 And Your Honor issued an order saying, okay,
13 we'll make this very simple. Anything related to Quick Fix,
14 anything related to the name Quick Fix has to be produced.
15 And honestly, Your Honor, that did make it simple because we
16 just went after the name. We were not looking for the
17 definition of the product.

18 THE COURT: Right.

19 MR. TERAN: And which were, you know, what we
20 produced the spreadsheet that we did and, and things of that
21 nature. But that clarified the issue. I have no objection.
22 We have no objection to any discovery order, Your Honor, we
23 will comply.

24 THE COURT: Okay.

25 MR. TERAN: It is not my custom not to comply

1 with discovery orders.

2 THE COURT: I got that, I understand that.

3 Mr. Cupar --

4 MR. CUPAR: Just briefly.

5 THE COURT: -- do you stand up to say something?

6 MR. CUPAR: Yeah, two key points there. I just
7 want to make sure the Record is clear. I think Mr. Teran's
8 inaccurate about factually something here. The Court --

9 THE COURT: Procedural, as to procedure?

10 MR. CUPAR: Yeah.

11 THE COURT: Okay.

12 MR. CUPAR: Yes, as to procedure, the Court
13 granted Spectrum the right to identify URZ as a Defendant
14 back in June. The Court's -- so -- so in in August 29th,
15 I'm having -- it's Docket No. 63, just to be crystal clear,
16 the Court had then with URZ as a party, a hearing on this
17 and ordered on September 5th as a follow up, a specific
18 order to compel.

19 And Mr. Teran keeps arguing that he didn't
20 understand that discovery. No, that was even before that.

21 THE COURT: No, no, no, but I get it. But by the
22 time, I mean, obviously my first order that's directly
23 pertinent here, I have Docket 63 and Docket 80 --

24 MR. CUPAR: Yeah.

25 THE COURT: -- in front of me from August and

1 November, there had been some discovery issues previously,
2 and I may have spoken too broadly as to what was preceding
3 URZ being added as a Defendant in June or whenever that was.

4 MR. CUPAR: That's right.

5 THE COURT: So I think Mr. Teran was categorizing
6 as to that, but you're also correct that at some point URZ
7 has been here as a named Defendant and by the time the
8 August hearing occurred, URZ is on the -- I mean, it's
9 Spectrum Labs versus URZ Trends. That's the Docket caption
10 at 63.

11 MR. CUPAR: Yeah.

12 THE COURT: All right.

13 MR. CUPAR: And another point I would just want
14 to re-raise kind of going to this argument, whether it's at
15 the time URZ or URZ became a party or prior to that, during
16 the subpoena phase, the first request for Mr. Teran here was
17 for a protective order, which we complied with. We said no
18 problem. We understand that there could be some information
19 that we agreed to that, we entered a protective order, and
20 then subsequently, Mr. Teran represented there was no
21 documents, again.

22 So -- which was very troubling to say the least,
23 at that time and still is now that that request is made. So
24 again, it goes back to this issue that we keep --

25 THE COURT: How was it that -- remind me how it

1 was that with Royal Fragrances is the first named Defendant?
2 It had gotten to the point of you wanting discovery from URZ
3 and then they were then added?

4 MR. CUPAR: Yeah. And I'm, I --

5 THE COURT: I'm trying -- I don't --

6 MR. CUPAR: -- don't hold me too much to it. But
7 generally speaking what happened was Royal Fragrances -- in
8 short, what I think I can represent here correctly is that
9 they they pointed the finger at URZ and said that they
10 received, either directly or indirectly, their orders
11 from --

12 THE COURT: That URZ had sold to Royal
13 Fragrances.

14 MR. CUPAR: -- URZ and that included counterfeit,
15 I believe. Yeah, that's right.

16 MR. TERAN: Your Honor, may I speak to that
17 briefly?

18 THE COURT: And then he's simply relating what a
19 Defendant had said.

20 MR. TERAN: That's inaccurate, Your Honor.

21 THE COURT: And then you're saying that like
22 that's not --

23 MR. TERAN: It is inaccurate because --

24 THE COURT: -- what was Royal Fragrance.

25 MR. TERAN: Yeah.

1 THE COURT: Is it inaccurate that Royal Fragrance
2 has never said that?

3 MR. TERAN: As far as we know.

4 THE COURT: As far as you know.

5 MR. TERAN: And here's why.

6 THE COURT: Okay.

7 MR. TERAN: And here's here's why: In the
8 Complaint that they filed against us, they indicate that a
9 representative of Royal Fragrance gave an affidavit, a sworn
10 affidavit identifying us. And I got a copy of that sworn
11 affidavit through discovery. We are not named in that
12 affidavit at all.

13 THE COURT: Okay.

14 MR. TERAN: So that's -- you know, I would like
15 to see how it is that Royal Fragrance, you know, pointed the
16 finger at us because what I've seen so far in the affidavit,
17 they never did. So we haven't sold any counterfeits -- as
18 far as we know, as far as I know.

19 THE COURT: As far as you know, okay.

20 MR. CUPAR: And my response to Mr. Teran, I mean,
21 if this is all true, that what Mr. Teran is saying, he would
22 have -- and his client would have been providing this back
23 in March to 2023, you would have never seen these issues.
24 If all true, he would have complied with discovery.

25 Mr. Teran has been incredibly just -- I'm not

1 going to go there.

2 THE COURT: Oh, don't. Don't do that.

3 MR. TERAN: I won't go there.

4 THE COURT: And it's -- and Mr. -- that would
5 just invite Mr. Teran to stand up and say, look, I'm
6 entitled to --

7 MR. TERAN: Right.

8 THE COURT: -- push back on discovery that you're
9 not entitled to. And so that's what he would say.

10 MR. CUPAR: Yes.

11 THE COURT: Right? So --

12 MR. TERAN: We're open to discovery, Your Honor.

13 THE COURT: All right.

14 MR. TERAN: We will comply with discovery.

15 THE COURT: All right. So then, as to looking
16 now at -- I'm looking at docket -- the motion itself is at
17 Docket 83, pages 8 and 9. There's a request as to -- there
18 are numbers One, which has several sub-categories -- one,
19 two, three, four, and I guess seven, because that's just
20 simply a warning, which I've already given.

21 So one, two, three, four and seven being my order
22 coming off of this hearing on the discovery that should go
23 forward, not five as to pay legal fees at this point, not
24 six as to striking counterclaims and affirmative defenses at
25 this point.

1 Mr. Teran, do you have that in front of you? Do
2 you want to argue anything about that?

3 MR. TERAN: Your Honor is looking at Document 83?

4 THE COURT: It is -- it is intrusive. But I had
5 previously said by my prior order they could bring a motion
6 for intrusive discovery, which they've done.

7 MR. TERAN: Yeah, I mean, we'll do that, Your
8 Honor, I mean.

9 THE COURT: What's that?

10 MR. TERAN: We're fine with that. We'll do that.

11 THE COURT: Okay.

12 MR. TERAN: I mean, you know, if we don't have to
13 pay for it, obviously, if they're going to, you know, guide
14 us through the process, send their team over and look at our
15 other records, you know, we're we're okay with that.

16 THE COURT: All right.

17 MR. TERAN: We have nothing to hide.

18 THE COURT: Mr. Cupar?

19 MR. CUPAR: I will speak to that. I think on the
20 third-party vendor side, there's been enough. I won't use
21 the word that I'm thinking -- issues that I do think URZ
22 should pay for that third party, this vendor for the cost
23 related to that as part of the discovery, just like we would
24 for our side of the discovery as well, Your Honor.

25 I do think that's a step too far. I think they

1 need to pay for their own vendor here for third party to go
2 in and do this searching. So I don't think it's fair for us
3 to have to pay for that here at this point, especially with
4 all the things that have happened.

5 THE COURT: How much do you think it costs to
6 comply with the order that you're asking for?

7 MR. CUPAR: For the third-party vendor, I'm not
8 sure what they would charge for doing that searching, based
9 on custodians, because I don't know how many custodians
10 there are. The keywords are the easier part. Quick Fix,
11 Spectrum, there's a few others along those lines. I just
12 don't know how many custodians they have, based on what
13 would be necessary.

14 Mr. Teran might be able to answer that.

15 If there's only -- is he represented? It's a
16 small business. I'm assuming a few employees. I can't
17 imagine it being difficult or expensive.

18 MR. TERAN: Your Honor, I would object to costs.
19 I -- there's no basis for it, one, because we haven't hidden
20 anything. We haven't -- they haven't shown.

21 THE COURT: And so -- and so I just want it very
22 clear, Mr. Tehran. I'm going to -- when I order this
23 discovery and this discovery is done, you believe, based on
24 what your client has told you, there's going to be -- there
25 might be one or two hits somewhere that you -- that they

1 didn't gather. So I'm not going to hold you that there'll
2 be nothing else. But from what you've heard, if anything is
3 found from all of this, it will be not a substantial
4 production. Is that your understanding?

5 MR. TERAN: My understanding from my client, a
6 very clear representation, after me indicating to my client
7 the importance of our compliance with discovery orders, they
8 have represented to me that they have done a full search,
9 and they have found everything that we have produced.

10 THE COURT: Okay.

11 MR. TERAN: Now, I don't know that first hand,
12 right?

13 THE COURT: I know.

14 MR. TERAN: Okay.

15 THE COURT: That's what --

16 MR. TERAN: But that is the representation.

17 THE COURT: But they say they've done a search
18 and they've given you everything.

19 MR. TERAN: Right. And I have not heard anything
20 from the Plaintiff to indicate otherwise. They have brought
21 up the receipt. I have shown that we have produced
22 documents related to the receipts.

23 THE COURT: But then there's unexplained number
24 differences and things. I'm not saying somebody's
25 falsifying something behind the scenes, but --

1 MR. TERAN: I think -- yeah, I think that he
2 pointed a receipt number versus an invoice number. I don't
3 know what that is, but I have no reason to doubt that that
4 invoice that we produced is related to the receipt that was
5 issued for that transaction because the date matches, the
6 quantity matches, the price matches, the name of the buyer
7 matches.

8 THE COURT: Okay.

9 MR. CUPAR: One more thing, Your Honor. I'm
10 sorry to keep adding.

11 THE COURT: Go ahead.

12 MR. CUPAR: Just an important one, though, I
13 think, just so we're clear on the Record, one thing that we
14 didn't -- we also didn't see in the opposition to our motion
15 for sanctions and it may be something you may want to
16 consider asking Mr. Teran, would be a hold letter. We don't
17 know if there's a litigation hold letter at the time.

18 So back when we served the subpoena, my
19 expectation would be that Mr. Teran provided some sort of
20 litigation hold letter to his client to make sure there's
21 no, for example, deletion of texts. If there's texting,
22 some backdoor texting, things like that, no emails, nothing
23 like that.

24 So one thing I didn't see in the opposition brief
25 was anything there, especially in view of the fact that the

1 initial representation was back in March, no documents. And
2 here we are, there's documents and -- and there's a
3 sanctions -- well, at least not a sanctions order, but an
4 order compelling this electronic production, too.

5 So I'd like to -- I think it would help this case
6 to understand better what has been instructed at that level,
7 even if there's a litigation hold in writing, which is a
8 common practice in our --

9 THE COURT: Is there any litigation hold --

10 MR. TERAN: Yes, there is, Your Honor.

11 THE COURT: -- letter?

12 MR. TERAN: Yeah.

13 THE COURT: Do you know when when you issued that
14 approximately?

15 MR. TERAN: When we received the Complaint, I
16 believe.

17 THE COURT: Okay.

18 MR. TERAN: That's -- that's customary.

19 THE COURT: Customary. I just want to be sure.
20 Okay, good.

21 All right. I have concerns about the fullness of
22 discovery compliance from the Defendants, as I've said.
23 Plaintiff has said that -- though actually you really don't
24 have any understanding of how much quantity URZ Trends might
25 be actually producing. I do think that this discovery, if

1 you want it, I'll award it. But as in Order it.

2 But Spectrum is going to have to front the cost
3 on it. But if, when it's done, it shows that there's what
4 could be argued as substantial non-compliance with
5 production to-date, you can ask to shift costs at that
6 point. Okay?

7 MR. CUPAR: Thank you, Your Honor.

8 THE COURT: I think that that's -- I think that's
9 a fair and relevant way to proceed on this, because
10 Mr. Teran is trying to say, hey, they've at least told me
11 they've done everything, and if it turns out that they did
12 or it's closely approximate to everything, then they
13 shouldn't have had to pay for this, shouldn't have gone
14 around in circles so much to get to this point. But if you
15 want to pursue that discovery, you'll front the cost and
16 then you can try to shift it later if it is believed
17 appropriate based on what's then turned over. All right?

18 MR. CUPAR: Thank you, Your Honor.

19 THE COURT: All right.

20 MR. TERAN: I'm okay with that, Your Honor.

21 THE COURT: Okay.

22 MR. TERAN: If you can lay out the parameters of
23 what the search is going to be.

24 THE COURT: I am intending -- there is a specific
25 order. I try not to on some orders. When things are being

1 specifically asked for by parties, and this is certainly
2 true like when parties want default judgments or anything
3 having to do with like a mortgage dispute. When I've got
4 it, I'm always sort of like, make sure you've asked for the
5 order that you want to live with, that it's clear enough.
6 They've asked for a specific order.

7 And so and when I read it, it seems clear enough
8 to be followed if the parties are cooperating in good faith.

9 Is there anything that appears unclear right now,
10 Mr. Teran, that you think would require a little further
11 specification?

12 MR. TERAN: For example, we're looking at
13 Document 83, correct?

14 THE COURT: Docket -- yeah, Document 83. And
15 it's 00 there's Roman II, what sanctions are appropriate?
16 And then there's a list of one through seven.

17 MR. TERAN: On page eight.

18 THE COURT: Yeah.

19 MR. TERAN: Okay. Oh.

20 THE COURT: Starting on page eight and it goes
21 over to page nine.

22 MR. TERAN: Okay. Your Honor, for example,
23 number one, it includes owners or representatives. You
24 know, that that presumably would include every employee that
25 they have. I'm not necessarily sure that that's -- that

1 that's fair. And also the owners, you know, it should be
2 the -- it should be the -- it should be the, the Defendant
3 that is exposed to this, their operations, their emails. It
4 shouldn't be the personal accounts of the owners or the
5 employees.

6 THE COURT: Now, to be clear, Mr. Cupar, as I
7 understand the requested order, there's a third-party
8 neutral ESI vendor who gathers all this electronic
9 information and then does a search for relevancy terms. And
10 that's the only thing that's turned over. Spectrum is not
11 otherwise seeing anything else in what's being gathered in
12 the electronic search initially, right?

13 MR. CUPAR: That's right.

14 THE COURT: It has to have a relevant search
15 terms hit.

16 MR. CUPAR: Yes, sir.

17 THE COURT: Okay.

18 MR. TERAN: And also communication with counsel,
19 Your Honor, I would certainly block that out.

20 MR. CUPAR: That's the law, of course, privilege.

21 THE COURT: And is that you or is there other
22 counsel?

23 MR. TERAN: Me, for sure. I don't know if they
24 had other counsel before.

25 MR. CUPAR: And if that's the case, of course,

1 Your Honor, that's a privilege log.

2 THE COURT: Right. That -- well, it has a hit and
3 so on privilege it would be turned over. It would be
4 identified by Bates range as a hit with counsel, and then
5 it'd be up to counsel. You wouldn't see it, but counsel to
6 URZ would see it and would produce a privilege log based on
7 that.

8 MR. CUPAR: That's right. And one more thing. I
9 think our protective order even has a clawback provision.
10 So let's say if something did get produced that's privileged
11 -- yeah.

12 THE COURT: Yeah. But you really need to try
13 to --

14 MR. CUPAR: Avoid that.

15 THE COURT: -- the privilege getting out.
16 because the precedent says the cat is then out of the bag,
17 as it were.

18 Did you have a specific order in front of me to
19 implement this?

20 MR. CUPAR: I provided it as 83-6. So we do have
21 a proposed order. It includes obviously 1 through --

22 THE COURT: Yeah.

23 MR. CUPAR: Huh, the numbering is a little
24 different.

25 THE COURT: Do you have a copy of that or,

1 Jennelle, can you print that for me?

2 MR. CUPAR: Yes. Your Honor wants it sent by
3 email or -- I'm sorry, I didn't hear your request. I'm
4 sorry.

5 THE COURT: I was asking, do you have a copy of
6 it? Or my case manager can print me a copy if you don't.

7 MR. CUPAR: I do have it, Your Honor, of the
8 proposed order?

9 THE COURT: Of the proposed order, I just want to
10 take a look at it. I had not seen that.

11 MR. TERAN: And, Your Honor, I would also like to
12 point out an item. Two bank accounts. Nothing in the bank
13 accounts will be related to the Quick Fix product because no
14 check, no transaction identifies the product. It's always
15 checks that are issued by the Defendant to third party, or
16 checks that are received by the Defendant from third
17 parties. It doesn't identify the product, so.

18 MR. CUPAR: I don't agree with that, Your Honor.
19 Here's why on that point specifically. But counterfeiters
20 run multiple bank accounts, so we need to know each bank
21 account.

22 MR. TERAN: Well, Your Honor, now we're being
23 tagged as counterfeit.

24 THE COURT: If -- if -- well, that's the
25 contention. That's if you disagree with it.

1 MR. CUPAR: That's the contention.

2 THE COURT: So got it. I'm still thinking about
3 it.

4 MR. CUPAR: If I may approach?

5 THE COURT: Can you hand that up, please? Thank
6 you.

7 (Pause in the proceedings.)

8 MR. TERAN: A small point of note on that, Your
9 Honor. It says 1 through 6. The last paragraph below 6
10 would have been 7. It was just a typo. It's the same
11 language as in the --

12 THE COURT: Is hereby instructed that failure to
13 comply? Got it.

14 MR. CUPAR: Yep.

15 MR. TERAN: Your Honor, on number four, I would
16 like to have, you know, some time limitation on that. You
17 know, if they're going to come into our physical location
18 and conduct a search, one, I would --

19 THE COURT: A time limitation for what's searched
20 for or when that would happen?

21 MR. TERAN: Both when -- we would like it to be,
22 you know, not within business hours so as to not interrupt
23 with the operation. And then, you know, we don't want it to
24 last, you know, forever.

25 MR. CUPAR: I don't read that proposed language

1 to be anything different than that, Your Honor. We'd be
2 reasonable, of course.

3 THE COURT: Well, yeah. But y'all both think
4 each other is not reasonable in discovery to this point. So
5 we're trying to specify some things.

6 So on the bank account, the bank account is
7 identified.

8 That's -- you just simply want them to identify
9 every bank account and then whatever you can go third party
10 subpoena from the banks, you can go, but they're not having
11 to do anything on that. They just have to tell you, here's
12 our bank accounts.

13 MR. CUPAR: Yes, sir.

14 THE COURT: That's all you're asking for?
15 Understood?

16 MR. TERAN: Well, no, I understand, Your Honor,
17 but the bank accounts are not linked to Quick Fix. They're
18 running an operation to which involves --

19 THE COURT: It may or may not be. And discovery
20 is broad towards the production of anything that might be
21 relevant. And I can't make a determination about whether it
22 is or is not relevant.

23 There will be an order to identify the bank
24 accounts. And then when the subpoenas go, if you're working
25 with them, I'm sure they're going to contact you as to

1 whether there's any opposition to discover -- that discovery
2 request. You can take it up with the banks. The banks can
3 bring it to me, whatever.

4 But in terms of simply identifying the bank
5 accounts, that's going to be part of this order now.

6 MR. TERAN: Okay.

7 THE COURT: Because that's all that's being asked
8 for, okay.

9 All right, here's my order coming off of this
10 hearing:

11 I am going to enter an order that is
12 substantially in the form of that proposed at Docket
13 Entry 83-6, subject to it not including point number five
14 and point number six there.

15 The parties are ordered to confer as to how the
16 production of privileged matter will proceed, like
17 accounting for the fact that there might be hits that
18 disclose privilege. And that I would like some provision in
19 there for cooperation as to this not occurring within
20 business hours and otherwise specifying reasonable
21 conference and accommodation between both parties. All
22 right?

23 And if there's any specifics you all want to work
24 out and put into the Order, great. But other than that,
25 this will happen so that business isn't disrupted or caused

1 concern to customers. And we'll go from there.

2 MR. TERAN: And one more thing, Your Honor. On
3 number one, they want to search hard drives and servers and
4 cell phones and laptops. You know, one, it has to be
5 related to the business.

6 THE COURT: Yes.

7 MR. TERAN: It can't be personal devices.

8 THE COURT: It's --

9 MR. TERAN: And two, if they take our computers
10 away from us our operation --

11 THE COURT: They won't. It would be -- it would
12 be for imaging.

13 MR. TERAN: Okay. But it would have to be done
14 outside of business hours.

15 THE COURT: Right, right. And identifying
16 electronic devices like that is not a seizure of those
17 devices, as I understand it. It's for imaging of them.
18 correct?

19 MR. CUPAR: Yes, sir.

20 THE COURT: All right. In a secure fashion.

21 And as to personal devices, the problem is that I
22 don't know who the employees are or how many people are
23 involved, but I think there's a high likelihood that
24 employees use personal devices to conduct company business.
25 I think that's just the nature of what's going on.

1 Is there -- Mr. Cupar, is that what you're
2 suspicion would be as to the potential for relevant
3 evidence?

4 MR. CUPAR: That's exactly right, Your Honor.

5 THE COURT: Mr. Teran, do you -- what's your
6 thought?

7 MR. TERAN: Yeah, well.

8 THE COURT: I'm trying for it.

9 MR. TERAN: Yeah.

10 THE COURT: It needs to be intrusive, I
11 understand that, but I understand the concern. But again,
12 this is all going towards a third-party ESI vendor so that
13 everything that's being gathered isn't necessarily going to
14 Spectrum. It's simply being gathered and preserved.

15 MR. TERAN: I understand, Your Honor, but one
16 thing I would point out is that I do not represent the
17 employees. Right? I represent URZ Trends, LLC.

18 THE COURT: Right.

19 MR. TERAN: So I can't speak to the employees. I
20 can't speak to their willingness to turn this over.

21 THE COURT: Right.

22 MR. TERAN: That is beyond my control, and I can
23 instruct them to do so.

24 THE COURT: It's also -- it is -- which one are
25 we looking at in particular? That's as to number?

1 MR. TERAN: It's number one, all of number one it
2 calls for -- if you look at (1)(C) hard drive, server, cell
3 phones, laptops, desktop computers, tablets, other
4 electronic devices. And now would this be devices that are
5 in their home or at the location? You know, I mean, if they
6 have family photos, their kids, and medical information --

7 THE COURT: That URZ, including its own
8 representatives' uses for any purpose, and so it's
9 employees. And so there's a conversation about whether
10 they've used any of those devices for an URZ business
11 purpose, and if so, it's within the ambit of the order.

12 MR. CUPAR: Yes, Your Honor.

13 THE COURT: Which itself is going to have a trust
14 but verify component.

15 Mr. Teran, you need to admonish your client and
16 for your client to -- whether it's you directly to the
17 employees that with electronic record searches, what one
18 person says is or isn't there, it's going to be verified
19 from so many other different ways as to what is circulating
20 around out there.

21 And so, as I've said, if anybody's
22 misrepresenting what they're doing or what they're producing
23 and it comes around that that was a misrepresentation, there
24 will be consequences in this Court. All right?

25 Have I referred you all to my order in *Thomas*

1 *versus United Airlines* at this point?

2 MR. TERAN: No, Your Honor.

3 THE COURT: So find that one. There's two. I am
4 literally not saying that anything like this is going on,
5 but when we raise the invoice, there's the receipt, and then
6 the numbers don't match on the other invoice. What could
7 possibly account for that? And *Thomas versus United*
8 *Airlines*, which had an ADA complaint within it, someone who
9 had purported to take leave because of an ADA condition to
10 go to the hospital, apparently didn't go to the hospital,
11 but then when United Airlines was concerned about that and
12 started digging into it, she then later went to the hospital
13 two weeks later and got an invoice from that and switched
14 the invoice numbers.

15 And ultimately, I'm not sure if that law firm is
16 practicing anymore, but I referred the law firm and the
17 Plaintiff to the AUSA for consideration of prosecution for
18 perjury because evidence had apparently been falsified in
19 that case and given to and sworn to by counsel.

20 So again, I take it very seriously, and I see
21 what the problems are when parties' clients are not
22 adequately counseled about what their obligations are going
23 to be. And so if URZ doesn't understand what the potential
24 consequences are for complying with federal discovery, now
25 that order can be reviewed and they can understand that it

1 can be quite severe indeed. Okay?

2 MR. TERAN: Your Honor, one thing regarding the
3 hold letter, I can't find it on my records that it was sent,
4 so we may not have sent the hold letter.

5 THE COURT: Okay. All right. All right. Well,
6 obligations about spoliation arise independently of whether
7 there's a hold letter or whether there's a demand. There
8 are rules about that once evidence -- once there is a claim,
9 evidence about that needs to be held. And so if it turns
10 out things have not been preserved in a way that looks
11 illegitimate, we'll take that up when we get there -- if we
12 get there. Don't know at this point. All right?

13 MR. CUPAR: Yes, Your Honor. Thank you.

14 MR. TERAN: Thank you, Your Honor.

15 THE COURT: All right, anything else? Any other
16 questions?

17 MR. CUPAR: No, sir.

18 MR. TERAN: No.

19 THE COURT: All right. Very interesting. Thank
20 you for flying in.

21 MR. TERAN: No problem, Your Honor.

22 THE COURT: All right.

23 MR. CUPAR: That makes two of us, by the way. I
24 get from Cleveland. So, yeah.

25 THE COURT: What's that?

1 MR. CUPAR: I came in from Cleveland. It's a
2 little warmer here, so.

3 THE COURT: I thought -- you're not Houston?

4 Oh. Okay.

5 MR. CUPAR: My co-counsel is, but --

6 THE COURT: Well, no, no, no. I looked at the
7 docket sheet and I only know -- oh, Cleveland, Ohio. There
8 it is. First one, and then -- but the last attorney, I just
9 looked at the bottom of the page, and that was a Houston
10 address.

11 MR. CUPAR: Yes.

12 THE COURT: All right. Well, you're welcome,
13 since it's warm here. All right.

14 (Laughter)

15 MR. CUPAR: Right.

16 THE COURT: Thank you all. We're adjourned.

17 (Proceedings adjourned at 3:43 p.m.)

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1 I certify that the foregoing is a correct
2 transcript to the best of my ability produced from the
3 electronic sound recording of the proceedings in the above-
4 entitled matter.

5 /S/ MARY D. HENRY

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